

REMARKS

At the time of the Office Action dated May 15, 2007, claims 1-17 were pending and rejected in this application.

CLAIMS 1-17 ARE REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON
RODRIGUEZ ET AL., U.S. PATENT PUBLICATION NO. 2002/0029228 (HEREINAFTER
RODRIGUEZ)

Although Applicants disagree that the claimed invention is obvious based upon Rodriguez, to expedite prosecution of the Application, Applicants submit that the reference to Rodriguez cannot be properly applied against the present Application under 35 U.S.C. § 103. As discussed in M.P.E.P. § 2146, a reference that qualifies as "prior art" only under 35 U.S.C. § 102(e) cannot be considered when determining whether an invention is obvious under 35 U.S.C. § 103, provided the prior art and the claimed invention were commonly owned at the time of the invention. See M.P.E.P. § 706.02(l).

Application No. 10/020,048 (the present application) and
U.S. Patent Application No. 09/393,084 (Rodriguez) were, at the
time the invention was made, commonly owned by International
Business Machines Corporation

Thus, under 35 U.S.C. § 103(c), the reference to Rodriguez cannot be considered by the Examiner when determining whether Applicants' invention is obvious under 35 U.S.C. § 103. Applicants, therefore, respectfully submit that the imposed rejection of claims 1-17 under 35 U.S.C. § 103 for obviousness based upon Rodriguez is not viable and, hence, solicit withdrawal thereof.

Applicants have made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. However, Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. Accordingly, and in view of the foregoing remarks, Applicants hereby respectfully request reconsideration and prompt allowance of the pending claims.

Although Applicants believe that all claims are in condition for allowance, the Examiner is directed to the following statement found in M.P.E.P. § 706(II):

When an application discloses patentable subject matter and it is apparent from the claims and the applicant's arguments that the claims are intended to be directed to such patentable subject matter, but the claims in their present form cannot be allowed because of defects in form or omission of a limitation, the examiner should not stop with a bare objection or rejection of the claims. The examiner's action should be constructive in nature and when possible should offer a definite suggestion for correction.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

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Respectfully submitted,

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